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7 Attorneys for Plaintiffs

8  
9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 MINDGEEK S.À.R.L., MG PREMIUM  
LTD, MG CYPRUS LTD, MG  
13 CONTENT RK LIMITED, MG  
CONTENT DP LIMITED, and SBO  
14 PICTURES, INC.,

15 Plaintiffs,

16 v.

17 WGCZ S.R.O., NKL ASSOCIATES  
S.R.O., STEPHANE MICHAEL  
18 PACAUD, DEBORAH MALORIE  
PACAUD, and Does 1-10 d/b/a  
19 XVIDEOS.COM and XNXX.COM,

20 Defendants.  
21  
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CASE NO. 2:15-cv-8023

**RESPONSE TO ORDER TO SHOW  
CAUSE REGARDING DISMISSAL  
FOR LACK OF PROSECUTION**

1 Plaintiffs MindGeek S.à.r.l., MG Premium Ltd, MG Cyprus Ltd, MG  
 2 Content RK Limited, MG Content DP Limited, and SBO Pictures, Inc.  
 3 (“Plaintiffs”) hereby respond to the Court’s February 24, 2016 Order to Show  
 4 Cause Regarding Dismissal for Lack of Prosecution (ECF No. 10) as follows:

5 **I. BACKGROUND**

6 On October 13, 2015, Plaintiffs, leading producers and distributors of adult-  
 7 oriented content, filed their Complaint against Defendants, the owners and  
 8 operators of a network of adult tube-sites engaged in rampant copyright  
 9 infringement. *See* Complaint (ECF No. 1). Defendants WGCZ S.R.O. (a Czech  
 10 company), NKL Associates S.R.O. (a Czech company), Stephane Michael Pacaud,  
 11 Deborah Malorie Pacaud, and Does 1-10 d/b/a XVideos.com and XNXX.com  
 12 (“Defendants”) are all located outside the United States. Plaintiffs are informed  
 13 and believe that Defendants WGCZ S.R.O., NKL Associates S.R.O., and Stephane  
 14 Michael Pacaud are all in the Czech Republic, and that Defendant Deborah  
 15 Malorie Pacaud is in France. *See* Complaint ¶¶ 15-18.

16 Because all of the Defendants are based abroad, Plaintiffs are serving them  
 17 through the Hague Convention on the Service Abroad of Judicial and Extrajudicial  
 18 Documents. Promptly after filing the Complaint, Plaintiffs hired a Hague Service  
 19 vendor and had the Summons and Complaint translated into Czech and French.  
 20 On October 26, 2015, Plaintiffs’ Hague Service vendor submitted requests for  
 21 service of the defendants to the central authorities in the Czech Republic and  
 22 France. True and correct copies of these requests are attached as Exhibit A.

23 Plaintiffs’ counsel understands that Hague Service in the Czech Republic  
 24 and France usually is effectuated within four to six months. Therefore, because the  
 25 service requests were submitted at the end of October, Plaintiffs expect that the  
 26 Complaint will be served by approximately the end of April 2016.

**II. The Case Should Not Be Dismissed For Failure To Prosecute.**

**A. The 120-day deadline for serving a complaint does not apply to service in a foreign country.**

At the time Plaintiffs filed the Complaint in this Action, Federal Rule of Civil Procedure 4(m) provided:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

***This subdivision (m) does not apply to service in a foreign country under Rule 4(f) or 4(j)(1).***<sup>1</sup>

FRCP 4(m) (emphasis added).

Rule 4(f) governs “Serving an Individual in a Foreign Country,” and provides that such service may be accomplished “by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents[.]” FRCP 4(f)(1). The same rules govern service on a foreign corporation, which may be served “at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual....” FRCP 4(h)(2).

Therefore, under the federal rules, the 120-day deadline for service does not apply in cases, as here, where all of the defendants are located abroad and being served pursuant to the Hague Convention. *See Lucas v. Natoli*, 936 F.2d 432 (9th

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<sup>1</sup> On December 1, 2015, FRCP 4(m) was amended to shorten the time for service of a complaint to 90 days.

1 Cir. 1991) (“the plain language ... makes the 120-day service provision  
2 inapplicable to service in a foreign country”).

3 **B. Plaintiffs are working diligently to serve Defendants.**

4 Moreover, even if the exception for service on defendants in foreign  
5 countries did not apply, Plaintiffs would be entitled to additional time to serve the  
6 Complaint under Rule 4(m), which states that “if the plaintiff shows good cause for  
7 the failure, the court must extend the time for service for an appropriate period.”  
8 *See also Blandford v. Broome County Gov’t*, 193 F.R.D. 65, 68, 2000 U.S. Dist.  
9 LEXIS 6917, \*7-8 (N.D.N.Y 2000) (court must extend the time for service upon a  
10 showing of good cause, and even has the discretion to extend the service deadline  
11 absent such a showing).

12 Here, good cause exists because Plaintiffs are working diligently to serve  
13 Defendants. Plaintiffs arranged for Hague Service shortly after filing the  
14 Complaint, and Plaintiffs’ Hague Service vendor promptly submitted requests to  
15 the Central Authorities in the Czech Republic and France less than two weeks  
16 later. All that is left for Plaintiffs to do is wait for Hague Service to be completed  
17 in the Czech Republic and France, and under Rule 4(m) Plaintiffs must be given  
18 time to do so.

19 **III. Conclusion**

20 For the foregoing reasons, Plaintiffs respectfully request that the OSC be  
21 discharged, and that Plaintiffs’ service deadline be extended to May 2, 2016.

22 DATED: March 8, 2016

23 DAVID A. STEINBERG  
24 MARC E. MAYER  
25 EMILY F. EVITT  
26 MITCHELL SILBERBERG & KNUPP LLP

27 By: /s/Emily F. Evitt  
28 Emily F. Evitt  
Attorneys for Plaintiffs

**RESPONSE TO ORDER TO SHOW CAUSE  
REGARDING DISMISSAL FOR LACK OF PROSECUTION**

**EXHIBIT A**

**REQUEST  
FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS**

Convention on the service abroad of judicial and extrajudicial documents in civil or  
commercial matters, signed at The Hague, November 15, 1965.

**Identity and address of the applicant**

**Rick Hamilton  
633 Yesler Way  
Seattle, WA 98104  
United States of America**

Authorized applicant pursuant to public law 97-351 of Feb. 26, 1983  
which amended rule 4(c) 2(a) Federal Rules of Civil Procedure

**Address of receiving authority**

MINISTRY OF JUSTICE  
128 10 PRAHA 2  
VYSEHRADSKA 16  
CZECH REPUBLIC

The undersigned applicant has the honour to transmit-in-duplicate the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one copy thereof on the addressee, i.e.;

(identity and address)

**WGCZ S.R.O.**

**PRAHA 1 - NOVE MESTO, KRAKOVSKA 1366/25, PSC  
110 00  
CZECH REPUBLIC**

DOB:

Phone:

- ☒ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention.\*
- ☐ (b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph of article 5):\*

- ☐ (c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5).\*

The authority is requested to return or to have returned to the applicant a copy of the documents – and of the annexes\* – with a certificate as provided on the reverse side.

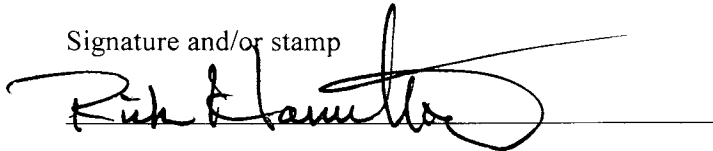
Hearing Date:

List of documents:

**SUMMONS IN A CIVIL ACTION; COMPLAINT WITH  
SCHEDULE A AND B; NOTICE OF ASSIGNMENT TO UNITED  
STATES JUDGES (SUBMITTED IN DUPLICATE WITH  
TRANSLATIONS)**

Done at Seattle, Washington USA, on Oct 26 2015

Signature and/or stamp





**PFI**

**PROCESS  
FORWARDING  
INTERNATIONAL**



TRACKING #: 30239883



USM-94 (Est. 11/22/77)

(Formerly OBD-116, which was formally LAA-116, both of which may still be used)

\* Delete if inappropriate

## SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, November 15, 1965.

(article 5, fourth paragraph)

Name and address of the requesting authority: **Rick Hamilton  
633 Yesler Way  
Seattle, WA 98104  
United States of America**

Particulars of the parties:

**MINDGEEK S.A.R.L., et al.**

vs. **WGCZ S.R.O., et al.**

### JUDICIAL DOCUMENT\*

Nature of the document:

To give notice to the Defendants of the institution against them of a civil lawsuit.

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

Plaintiffs are seeking to recover civil damages and other relief, amount to be determined in court.

Date and place for entering appearance:\*

Defendant has twenty-one days from receipt of the accompanying Summons to make a written appearance, address is noted on the Summons.

Court which has given judgment:\*

n/a

Date of judgment:\*

n/a

Time limits stated in the document:\*

Hearing Date:

### EXTRAJUDICIAL DOCUMENT\*

Name and purpose of the document:

n/a

Time limits stated in the document:\*

n/a

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MINISTRY OF JUSTICE  
128 10 PRAHA 2  
VYSEHRADSKA 16  
CZECH REPUBLIC

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(identity and address)

**NKL ASSOCIATES S.R.O.**

**PRAHA 1 - NOVE MESTO, KRAKOVSKA 1366/25, PSC  
110 00  
CZECH REPUBLIC**

DOB:

Phone:

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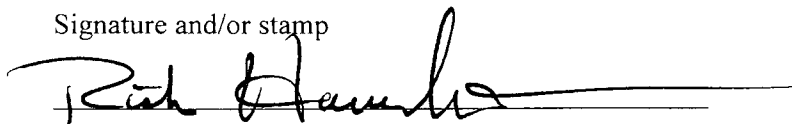
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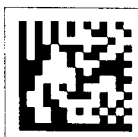
Signature and/or stamp





**PFI**

**PROCESS  
FORWARDING  
INTERNATIONAL**



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Date of judgment:\*

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MINISTRY OF JUSTICE  
128 10 PRAHA 2  
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CZECH REPUBLIC

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(identity and address)

**STEPHANE MICHAEL PACAUD**

**PRAHA 1 - NOVE MESTO, KRAKOVSKA 1366/25, PSC  
110 00  
CZECH REPUBLIC**

DOB:

Phone:

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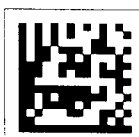
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Done at Seattle, Washington USA, on Oct 26 2015

Signature and/or stamp

*Rick Hamilton*



TRACKING #: 30239885



USM-94 (Est 11/22/77)

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\* Delete if inappropriate

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MINISTERE DE LA JUSTICE  
BUREAU DE L'ENTRAIDE JUDICIAIRE  
INTERNATIONALE D4  
13 PLACE VENDOME  
75042 PARIS (1ER) CEDEX 1

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(identity and address)

**DEBORAH MALORIE PACAUD  
VILLEFRANCHE SUR SAONE  
37B AVENUE DE LA PLAGE  
PENICHE PERLE NOIRE  
FRANCE**

DOB:

Phone:

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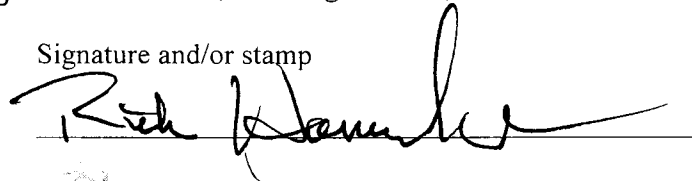
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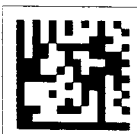
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**PFI**

PROCESS  
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INTERNATIONAL



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Ex. A Pg. 11

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